

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

KXLE, Inc.
KXLE(AM) & KXLE-FM
Ellensburg, Washington

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)
) File No. EB-99-ST-404
)
) NAL/Acct. No. 915ST0008
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FORFEITURE ORDER

Adopted: March 14, 2000**Released: March 15, 2000**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) against KXLE, Inc., ("KXLE"), licensee of Stations KXLE(AM) and KXLE-FM, Ellensburg, Washington, for willful violation of Section 11.35 of the Commission's Rules ("Rules").¹ The noted violation involves the failure of KXLE to keep the Emergency Alert System ("EAS") equipment for Stations KXLE(AM) and KXLE-FM operational.

2. On June 24, 1999, the District Director of the FCC's Seattle, Washington Field Office ("Field Office") issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of eight thousand dollars (\$8,000).² KXLE filed a response on July 26, 1999.³

II. BACKGROUND

3. On March 9, 1999, an agent from the Field Office conducted an inspection of Stations KXLE(AM) and KXLE-FM, which was limited to the EAS system, tower registration, and public file

¹ 47 C.F.R. § 11.35.

² *Notice of Apparent Liability*, NAL/Acct. No. 915ST0008 (released June 24, 1999).

³ KXLE's response was timely filed but misdirected. The staff was not aware of a response being filed and issued a "no response" *Forfeiture Order*, DA 99-1982 (released September 27, 1999). The *Forfeiture Order* was set aside by letter on October 18, 1999, after the staff became aware of the response.

requirements. The inspection resulted in the issuance of a Notice of Violation ("NOV") on April 21, 1999, for violations concerning the EAS system, the stations' public files and tower registration. KXLE responded to the NOV on May 27, 1999, indicating that all the violations had been corrected. Upon reviewing KXLE's response to the NOV, the Field Office issued an NAL for failure to keep the EAS equipment operational for both the AM and the FM stations.

4. In response to the NAL, the licensee sent the FCC a letter asking that the staff re-evaluate the forfeiture amount because: KXLE(AM) had been compliant with the EAS rules since April 1998, but the equipment was dismantled for repair on the day of the inspection; management did not know that KXLE-FM was required to relay EAS alerts; the misunderstanding regarding KXLE-FM's equipment was corrected as soon as it became known; and the amount of the forfeiture is beyond the stations' financial means.

III. DISCUSSION

5. We do not believe that KXLE has presented sufficient reasons to justify reducing the forfeiture amount. Even if the AM equipment had been dismantled for repair on the day of inspection, as KXLE claims, we believe an \$8,000 forfeiture amount for the inoperable EAS equipment for the FM station alone is appropriate. *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, FCC 99-407, released December 28, 1999 (base amount of \$8,000 for EAS violation).

6. Further, KXLE claims that its lack of knowledge of required EAS testing for the FM station warrants reducing the forfeiture amount. Commission licensees are responsible for knowing and adhering to the statutes and rules that apply to them. Lack of knowledge of those statutes and rules is not sufficient justification for reducing a forfeiture imposed for violating them. *See Silka Broadcasting Company, Inc.*, 70 FCC 2d 2375, 2378 (1979).

7. KXLE also requests mitigation of the forfeiture amount because it corrected the violation as soon as it was made aware of it. Though it appears that the violation was rectified promptly after the inspection, remedial action to correct a violation, although commendable, will not nullify a forfeiture penalty. *See Station KGVJ, Inc.*, 42 FCC 2d 258, 259 (1973).

8. Finally, KXLE asserts that the monetary fine imposed upon it is beyond its financial means. The NAL sent to KXLE clearly stated that claims of inability to pay should be supported by tax returns or other financial statements prepared under generally accepted accounting procedures for the most recent three-year period.⁴ Because KXLE did not provide financial information upon which we can make a determination as to its ability to pay the forfeiture, we must deny the request for reduction. *See Liability of Maccau Traders, Inc.*, 13 FCC Rcd 228 (1998).

⁴ Notice of Apparent Liability at footnote 2.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁶ KXLE, Inc., IS **LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violating Section 11.35 of the Rules requiring that a broadcast station's EAS equipment be kept operational.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules,⁷ within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁸ Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 915ST0008. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.⁹

11. **IT IS FURTHER ORDERED** that, a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to KXLE, Inc., at 1311 Vantage Highway, Attn: Brad Tacher, GM, Ellensburg, Washington 98926.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 504(a).

⁹ See 47 C.F.R. § 1.1914.